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No. 05-908

Supreme Court, U.S.
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In the Supreme Court of the United States

PARENTS INVOLVED IN COMMUNITY SCHOOLS,
Petitioner,

v.

SEATTLE SCHOOL DISTRICT NO. 1, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF AMICUS CURIAE OF LOS ANGELES UNIFIED SCHOOL DISTRICT IN SUPPORT OF RESPONDENTS

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IDENTITY AND INTEREST OF *AMICUS CURIAE* AND SUMMARY OF THE ARGUMENT

Pursuant to Supreme Court Rule 37.2, the Los Angeles Unified School District ("LAUSD") submits this brief *amicus curiae* in support of Respondents Seattle School District No. 1, *et al.*[1] LAUSD is the nation's second largest public school system serving over 700,000 students in more than 900 elementary, middle, senior high and special facility schools with a budget of nearly $7.5 billion. Approximately 8.8% of LAUSD's students are Anglo.

Since 1981, LAUSD has administered a Magnet Program and the Permits With Transportation Program ("PWT Program"), which are the physical desegregation components of the plan ordered by the California state court to remedy *de facto* segregation in LAUSD's schools. *Crawford v. Board of Education of the City of Los Angeles*, 17 Cal. 3d 280, 130 Cal. Rptr. 724 (1976). A subsequent decision by the California Court of Appeal, 113 Cal. App. 3d 633, 170 Cal. Rptr. 495 (1980), held that the findings of the trial court did not establish *de jure* violations that were necessary under California's recently-enacted voter initiative Proposition I before a State court could order the mandatory transportation of students to remedy *de facto* segregation in LAUSD's schools. This Court granted certiorari, 454 U.S. 892 (1981), held that the enactment of Proposition I was not itself a violation of the Fourteenth Amendment, and affirmed the State court decision. *Crawford v. Board of Education, City of Los Angeles*, 458 U.S. 527 (1982).

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* affirm that no counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *amici*, their members, or their counsel make monetary contribution to the preparation of this brief. In addition, letters of consent to file this brief were obtained from all parties and have been filed with the clerk of this Court.

This Court's 1982 *Crawford* decision endorsed California's election to "preserv[e] a greater right to desegregation than exists under the Federal Constitution." *Crawford*, 458 U.S. at 542. That greater right is the platform that supports LAUSD's Magnet and PWT Programs, which are at least partially race-based and therefore potentially vulnerable to a decision favoring Petitioners.

The Magnet Program provides LAUSD students (and their families) different educational choices through a network of magnet schools. Each magnet school offers a subject specialty, such as science, performing arts, business, or special teaching approaches. These schools have been largely successful in implementing LAUSD's desegregation plan and providing students with the benefits of being part of a diverse learning environment. Students who apply to the Magnet Program are selected randomly by computer, based on LAUSD and Court-approved guidelines, which include sibling relationship, neighborhood school conditions, racial and ethnic balance and available space in each program. Within the selection process, race and ethnicity are critical factors.

The PWT Program is a traditional majority to minority program, which is designed to provide students with integrated experiences by placing Hispanic, Black, Asian, and Other Non-Anglo students in integrated school settings while providing opportunities for Anglo students to attend Predominantly Hispanic, Black, Asian, and Other Non-Anglo ("PHBAO") schools.

The LAUSD's obligation to desegregate is based solely on state law. Its Magnet Program has been particularly successful, both in creating desegregated schools and in stimulating academic achievement among the students attending them. Because LAUSD is a school district in

which fewer than one of eleven students is Anglo and residential housing is largely segregated, LAUSD cannot begin to meet its obligation under state law without the limited use of race and ethnicity in the Magnet Program and other parts of its desegregation plan. Therefore, LAUSD urges this Court to affirm the decision of the court below.

ARGUMENT

I.

LAUSD INCORPORATES BY REFERENCE THE LEGAL ARGUMENTS SET FORTH IN THE *AMICUS* BRIEF SUBMITTED TO THIS COURT BY THE COUNCIL OF THE GREAT CITY SCHOOLS

LAUSD is a member district of *amicus curiae* Council of the Great City Schools, and has joined in its brief in support of Respondents Seattle School District No. 1, *et al.* The arguments in this brief will relate solely to LAUSD's unique circumstance of being subject to a desegregation plan imposed by order of the California state court in the absence of a Fourteenth Amendment violation.

II.

THIS COURT PROPERLY ENDORSED LAUSD'S OBLIGATION UNDER CALIFORNIA LAW TO REMEDY *DE FACTO* SEGREGATION

As this Court observed in assessing the impact of California's enactment of Proposition I, "the Proposition simply removes one means of achieving the state-created right to desegregated education. School districts retain the obligation to alleviate segregation regardless of cause. And the state courts still may order desegregation measures other

than pupil school assignment or pupil transportation." 458 U.S. 527, 544 (1982). Indeed, the state court had already ordered the LAUSD to implement its Magnet and PWT Programs incorporating a race-based selection process. *Crawford v. Board of Education*, Los Angeles Superior Court No. 822 854, (Sept. 10, 1981) (Order Re Final Approval of School Board Desegregation Plan and Discharge of Writ of Mandate).

In November 1996, California voters approved initiative Proposition 209, which added Article I Section 31(a) to the California Constitution. Proposition 209 provides that "[t]he state [including school districts] shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting." Cal. Const. art.1, § 31(a). In addition, subpart (d) of Proposition 209 preserved court-ordered desegregation plans in effect on November 6, 1996, the date of its enactment. Cal. Const. art.1, § 31(d). The application of Proposition 209 to the LAUSD Magnet and PWT Programs is currently before the California court in *American Civil Rights Foundation v. Los Angeles Unified School District, et al.*, No. BC341363 in the Los Angeles Superior Court. That action seeks to eliminate the use of race in the selection of students for magnet schools and the PWT Program on the ground, *inter alia*, that LAUSD's desegregation plan was no longer in effect when Proposition 209 was enacted.

III.

A PROHIBITION OF THE USE OF RACE AS A FACTOR IN MAGNET SCHOOL ADMISSION WOULD PREVENT LAUSD FROM FULFILLING ITS OBLIGATION UNDER THE *CRAWFORD* COURT ORDER TO DESEGREGATE

The LAUSD Magnet Program is a creature of the 1981 California state court order in *Crawford*. Until 2001, its cost, along with the cost of other parts of the LAUSD desegregation plan, were reimbursed by the State under former California Education Code Section 42243.6, which provided for state reimbursement of court mandated costs. Since 2001, funding for the Magnet Program has been through a Targeted Instructional Improvement Grant (TIIG) pursuant to California Education Code Sections 41540-41543. The California Education Code now requires that school districts use the funds first to pay the costs of court-ordered desegregation programs, and then use all remaining funds (or all TIIG funds, if the school district is not subject to a court-ordered desegregation plan) to increase student achievement at the district's lowest performing schools. *Cal. Educ. Code § 41543.*

If they were not part of a court-ordered desegregation plan, LAUSD's magnet schools and programs would not be eligible for TIIG funding. According to a June 2006 report of the Office of Student Integration Services comparing the California Standards Test scores of students at elementary and middle school magnet centers to those at the host school, magnet students' scores were almost universally higher. Achievement test scores at magnet schools, like those at magnet centers, are typically also above LAUSD average.

If this Court were to hold that the Fourteenth Amendment prohibited a school district's use of race except to remedy the effects of *de jure* segregation, the desegregation plan that the *Crawford* order required would be invalidated, and TIIG funding for the plan eliminated except for those programs already directed at improving academic achievement in LAUSD's lowest performing schools. Unless the LAUSD Board of Education found replacement funding, the Magnet Program would be eliminated as well, and nearly 54,000 magnet students returned to their home schools. For the majority of those students, that would mean leaving a desegregated school and returning to a school segregated by residential patterns within the LAUSD.

The *amicus* brief of the Council of the Great City Schools describes, at Section II C, concerns that the LAUSD shares about the likelihood of the resegregation of schools after the termination of a court-ordered desegregation plan. However, the resegregation faced by LAUSD and the students in its Magnet Program is potentially more devastating: an immediate loss of funding to the Magnet Program and possible termination of the Program transferring most of its 54,000 students from desegregated magnet schools and centers to segregated neighborhood schools.

CONCLUSION

This Court should retain the approach it adopted in *Crawford v. Los Angeles Board of Education*, 458 U.S. 527, 542 (1982): "having gone beyond the requirements of the Federal Constitution, the State was free to return in part to the standard prevailing generally throughout the United States. It could have conformed its law to the Federal Constitution in every respect. That it chose to pull back only

in part, and by preserving a greater right to desegregation than exists under the Federal Constitution, most assuredly does not render the Proposition unconstitutional on its face." The quoted language could refer to Proposition 209's preservation of existing court-ordered plans to remedy *de facto* segregation as easily as it does to Proposition I.

This Court should affirm the decision of the court below in favor of the Seattle School District No. 1.

Dated: October 9, 2006

Respectfully Submitted,

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